

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #3	CCRB Case #: 201909064	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/18/2019 4:30 PM	Location of Incident: 110 Chauncey Street	Precinct: 81	18 Mo. SOL 1/18/2021	EO SOL 9/4/2021	
Date/Time CV Reported Wed, 10/16/2019 1:49 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/16/2019 1:49 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Abel Lovera	01160	954081	081 DET
2. POM Christian Angeron	14678	961619	081 PCT
3. SGT Yasin Elhaddad	3263	940123	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Perry	14905	966272	081 PCT
2. POM Dennis Henriquez	08255	963567	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Abel Lovera	Abuse: Police Officer Abel Lovera frisked § 87(2)(b)	
B.SGT Yasin Elhaddad	Abuse: Sergeant Yasin Elhaddad frisked § 87(2)(b)	
C.POM Abel Lovera	Abuse: Police Officer Abel Lovera searched § 87(2)(b)	
D.POM Christian Angeron	Abuse: Police Officer Christian Angeron searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.SGT Yasin Elhaddad	Abuse: Sergeant Yasin Elhaddad searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.SGT Yasin Elhaddad	Abuse: Sergeant Yasin Elhaddad threatened to issue summons to § 87(2)(b)	
G.POM Abel Lovera	Abuse: Police Officer Abel Lovera failed to provide § 87(2)(b) with a business card.	
H.SGT Yasin Elhaddad	Abuse: Sergeant Yasin Elhaddad failed to provide § 87(2)(b) with a business card.	
I.POM Christian Angeron	Abuse: Police Officer Christian Angeron failed to provide § 87(2)(b) with a business card.	

## Case Summary

On October 16, 2019, § 87(2)(b) filed this complaint online via the CCRB website on behalf of himself and his friend § 87(2)(b). The case was originally assigned to Investigator Magdalena Azmitia, then reassigned to Investigator Michael Miskovski.

On July 18, 2019, at approximately 4:30 p.m., § 87(2)(b) as the driver of his vehicle, was double-parked in front of 110 Chauncey Street with § 87(2)(b) in the front passenger seat of his car, when Police Officer Abel Lovera, Sergeant Yasin Elhaddad, and Police Officer Christian Angeron of the 81<sup>st</sup> Precinct approached the vehicle. PO Lovera walked to the driver's side of the vehicle with PO Angeron who stood behind him, and Sgt. Elhaddad approached the front passenger side of the vehicle. The front driver's and passenger's windows were down, and as PO Lovera spoke with § 87(2)(b) he allegedly noticed the smell of marijuana. PO Lovera then ordered § 87(2)(b) and § 87(2)(b) out of the vehicle. § 87(2)(b) and § 87(2)(b) complied with the request. PO Lovera and Sgt. Elhaddad frisked § 87(2)(b) and § 87(2)(b) respectively at their sides of the vehicle and PO Lovera allegedly searched § 87(2)(b) by entering his pocket (**Allegations A - C: Abuse of Authority, § 87(2)(g)**). While the officers spoke with § 87(2)(b) and § 87(2)(b) people from the neighboring buildings began to congregate around the scene and shout at the officers. § 87(2)(b) and § 87(2)(b) then walked to the back of the vehicle with PO Lovera and Sgt. Elhaddad, and § 87(2)(b) began recording the incident with his phone, all while PO Angeron, while under the supervision of Sgt. Elhaddad as the ranking officer, searched the inside of the vehicle and the trunk for marijuana (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). Police Officer Dennis Henriquez and Police Officer Matthew Perry of the 81<sup>st</sup> Precinct arrived at the scene, shortly after the other officers, but did not interact with the vehicle or its occupants. Once the vehicle search was completed and PO Angeron did not find anything, § 87(2)(b) continued to record the officers and stood in the street, arguing with the officers. Sgt. Elhaddad ordered § 87(2)(b) back in his vehicle or he would take § 87(2)(b) back to the stationhouse to issue him a summons for disorderly conduct (**Allegation F: Abuse of Authority, § 87(2)(g)**). Once § 87(2)(b) and § 87(2)(b) were inside of the vehicle, § 87(2)(b) continued to record the officers and allegedly asked the officers for their business cards, but the officers allegedly refused and told him they did not have any business cards (**Allegations G, H, and I: Abuse of Authority, § 87(2)(g)**). PO Angeron issued § 87(2)(b) A summons § 87(2)(b) for parking in front of a driveway, cited as violating section f(2) of 4-08 of the Rules of the City of New York (**BR 01**) and the officers left the location.

PO Lovera has since been reassigned to the 81<sup>st</sup> Precinct Detective Squad.

The investigation obtained body-worn camera (BWC) footage from PO Angeron, PO Lovera, Sgt. Elhaddad, PO Perry, and PO Henriquez of the incident (**BR 02-08**). The investigation also obtained cell phone video footage from § 87(2)(b) (**BR 10-11**).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Abel Lovera frisked § 87(2)(b)**  
**Allegation (B) Abuse of Authority: Sergeant Yasin Elhaddad frisked § 87(2)(b)**  
**Allegation (C) Abuse of Authority: Police Officer Abel Lovera searched § 87(2)(b)**  
**Allegation (D) Abuse of Authority: Police Officer Christian Angeron searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**  
**Allegation (E) Abuse of Authority: Sergeant Yasin Elhaddad supervised the search of the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that PO Lovera, PO Angeron, and Sgt. Elhaddad approached § 87(2)(b)'s vehicle and PO Lovera told § 87(2)(b) that he smelled marijuana. Furthermore, it is uncontested that § 87(2)(b) and § 87(2)(b) stepped out of the vehicle and were frisked by PO Lovera and Sgt. Elhaddad, respectively. However, it is disputed whether PO Lovera searched § 87(2)(b). Finally, it is undisputed that PO Angeron searched § 87(2)(b)'s vehicle, including the trunk, for the alleged marijuana, but did not find any. Sgt. Elhaddad is the second subject officer of the vehicle search because he was the ranking officer at the scene, and as such, he is responsible for his officers' actions.

§ 87(2)(b) stated that he was double parked while awaiting § 87(2)(b)'s wife, when an unmarked vehicle pulled alongside him (**BR 09**). Officers approached his vehicle and told him he was double parked. § 87(2)(b) immediately began to record the officers with his cell phone. PO Lovera told § 87(2)(b) that his car smelled like marijuana and instructed him to step out of the vehicle. PO Lovera then patted down § 87(2)(b)'s legs and entered into his front pants pockets and grabbed the keys from his pocket. § 87(2)(b) did not see if any of the officers frisked § 87(2)(b) (**BR 09**). PO Angeron searched § 87(2)(b)'s vehicle and trunk but did not find anything. In his verified statement to the CCRB and in PO Lovera's BWC footage of the incident, § 87(2)(b) contested the smell of marijuana and stated that neither he nor § 87(2)(b) had smoked marijuana (**BR 09** and **BR 03**).

The investigation was unable to get in touch with § 87(2)(b) because he did not respond to any of Investigator Magdalena Azmitia's contact attempts and § 87(2)(b) did not provide any new contact information for § 87(2)(b) (**BR 15**).

Although the investigation does not have a statement from § 87(2)(b) and § 87(2)(b), § 87(2)(b) did not allege this, the investigation pled a frisk allegation against Sgt. Elhaddad since he admitted to doing so in his CCRB testimony.

PO Lovera stated in his first CCRB interview that when he approached the double-parked car, he smelled the general odor of marijuana and could not remember if it was lit or unlit (**BR 13**). PO Lovera then ordered the occupants out of the vehicle so that it could be searched for marijuana and the occupants to be frisked for the officers' safety and the marijuana (**BR 13**). PO Lovera stated that he only patted down the outside of § 87(2)(b)'s pants and did not enter any pockets to his knowledge and frisked § 87(2)(b) for PO Lovera's safety and to feel if § 87(2)(b) had marijuana on his person (**BR 13**). PO Lovera stated that he did not see a bulge anywhere on § 87(2)(b) nor any indication that § 87(2)(b) had a weapon on his person (**BR 13**). In PO Lovera's second CCRB interview, he clarified that he was also able to distinguish the odor between marijuana that had been smoked and marijuana in a vegetative state (**BR 23**). He noted that in his previous interview, he had gotten caught on the wording and was addressing that he could not remember in his recollection of the incident which odor was present (**BR 23**). PO Lovera stated that lit marijuana smells like smoke and is stronger than tobacco, while unlit smells distinctly like marijuana itself and is unique (**BR 23**). PO Lovera was not able to recall which odor he smelled on July 19, 2019. He noted that he too received training at the Police Academy, which consisted of the description of the odor, common hiding places, and photographs of marijuana in various states (**BR 23**). PO Lovera could not remember how many times he encountered marijuana in his law enforcement activities but noted that it was many times. He stated that he usually left the summonses to his partners like PO Angeron. PO Lovera could not recall how many times he assisted PO Angeron and other partners with marijuana enforcement (**BR 23**).

In his first statement to the CCRB, PO Angeron also stated that he smelled marijuana but could not tell if it was lit or unlit because they both smell the same to him (**BR 14**). In PO Angeron's second CCRB interview, he clarified that he was able to distinguish the smell of burnt and unburnt marijuana, noting that the former smells like marijuana mixed with cigarette smoke and the latter has a vegetative, fresh smell (**BR 24**). PO Angeron could not remember which odor he smelled on July 19, 2019 due to the amount of time that had passed between the interview and the incident. He stated that he was clarifying his ability to tell the difference between the two

because the smell changes each time, but in general, burnt versus unburnt have distinct smells (**BR 24**). PO Angeron noted that in the Police Academy, he was taught about the odors of marijuana in theory and shown pictures of marijuana in different states (**BR 24**). He further noted that the rest of an officer's training in marijuana detection comes from experience in the field. PO Angeron stated that he has encountered marijuana hundreds of times as a police officer; as for vehicle stops involving the odor of marijuana, he noted that it was over fifty times (**BR 24**).

Sgt. Elhaddad stated that he had also frisked § 87(2)(b) s legs (**BR 12**). He stated that he did this as a matter of the vehicle stop procedure when they smell marijuana. He personally did not remember if he smelled it but knew that PO Lovera stated aloud that he smelled marijuana (**BR 12**). Sgt. Elhaddad did not instruct PO Angeron to search the vehicle, but he knew that once an officer smelled marijuana, his permission to search the vehicle was implicitly understood (**BR 12**).

BWC footage confirms that PO Lovera claimed to smell marijuana as he approached the vehicle and spoke with § 87(2)(b) as seen in PO Lovera's BWC footage in IA #46. At 1:35-50 minute in the video, PO Lovera he states, "It smells, you guys been smoking weed? So why it smells like weed? You guys have weed inside the car? Do you have weed in the car? It smells like weed." (**BR 03**). The same is captured in PO Angeron's BWC footage in IA#47 at 1:32 minute and Sgt. Elhaddad's BWC footage in IA#45 at 1:52 minute (**BR 04, 02**). PO Lovera's BWC footage, located in IA#46 shows that PO Lovera quickly patted the outside of § 87(2)(b) s legs and torso over his pants for five seconds at 2:20 minutes. At 2:22, PO Lovera's arm and wrist appear to bend for a second near § 87(2)(b) s left pocket. At 2:26, PO Lovera says, "Here's your keys," and hands them to § 87(2)(b) (**BR 03**). PO Angeron's BWC footage, located in IA#47, at 2:15-16 minutes, shows that § 87(2)(b) exits the vehicle with nothing visible near his pockets. PO Lovera quickly bends to pat § 87(2)(b) s legs; PO Lovera's right arm appears to move for a second near § 87(2)(b) s left pocket at 2:20, but his hands are not visible due to the angle at which PO Angeron was standing behind PO Lovera (**BR 04**). PO Angeron's BWC footage then shows PO Lovera continuing to bend down and finally stand up at 2:24 and hand § 87(2)(b) his keys. As shown in Sgt. Elhaddad's BWC footage in IA#45, at 2:38 minutes, § 87(2)(b) exits the vehicle, and Sgt. Elhaddad appears to lean in close to § 87(2)(b) before instructing him to move to the rear of the vehicle, not showing a search or a frisk of § 87(2)(b) due to how close the camera is filming (**BR 02**). PO Angeron's BWC footage, located in IA#47, also shows his search of the vehicle from 2:46 to 6:00 minutes (**BR 04**). He searched the front seats, back seats, and the trunk. § 87(2)(b) s cell phone video footage, located in IA #10, does not show the frisk or alleged search of his person due to the angle of the camera (**BR 10**).

The court ruled in *People v. Chestnut*, 43 A.D.2d 260 and 36 N.Y.2d 971 (1974), that the smell of marijuana smoke on its own can be sufficient to provide police officers, qualified by experience and training, with probable cause to search an automobile and its occupants (**BR 16, 27**). In *People v. Norman*, 142 A.D.3d 1107, the court ruled that Chestnut can apply to a parked vehicle as well, and that the smell of marijuana smoke can constitute probable cause to search the vehicle and occupants for marijuana (**BR 30**). NYPD Patrol Guide Procedure 212-11 states that a frisk is authorized when the officers reasonable suspect the person is armed and dangers, "this includes situations in which the officer reasonably suspects that the person has committed, is committing, or is about to commit a violent crime or when the officer observes something on the person that she/he reasonably suspects is a weapon," (**BR 26**).

In a more recent case, decided on December 20, 2019 (after the date of the incident under investigation), by the Supreme Court of New York, Bronx County, *People v. Suncar*, 66 Misc. 3d 672, the court found officers who claimed to smell marijuana from within a sealed car incredible when the only marijuana found was a small quantity of raw marijuana in a sealed bag within another bag, with no evidence of smoked marijuana such as ashes, papers, lighters, clips, etc. (**BR 28**). While the Court acknowledged that Chestnut remains the law in New York, the Court also noted that it has been weakened by subsequent legislation and policy. It further noted that New

York courts have yet to specifically address the precise issue of whether odor of marijuana constitutes sufficient probable cause to search when possession of marijuana in small amounts is merely a violation, not a crime. In *Suncar*, the Court determined that even if the smell of marijuana was credited, the odor alone would not provide sufficient basis for the search of the car in this case.

Section f(1) of 4-08 of the Rules of the City of New York prohibits double parking (**BR 29**). The investigation noted the officers cited Section f(2) (prohibiting parking in front of driveways) in the summons issued to § 87(2)(b) and determined that this was an error. It is undisputed that § 87(2)(b) was double-parked.

§ 87(2)(g)

Although PO Lovera cited his safety for one of two reasons to frisk § 87(2)(b) he testified that he did not see any bulges on § 87(2)(b) or otherwise believe him to have a weapon on his person. § 87(2)(g)

BWC footage shows the entire time that § 87(2)(b) had alleged the search of his pocket during the frisk from two partial angles: from PO Lovera's camera and PO Angeron's camera, while he was standing behind PO Lovera. Video showed that the frisk with the alleged search lasted under five seconds, and that PO Lovera's range of motion could suggest that PO Lovera entered § 87(2)(b)'s pockets, but it is not entirely clear. § 87(2)(g)

Second, as Sgt. Elhaddad testified, he knew that the vehicle and the occupants were being searched for marijuana based off PO Lovera's claim that he stated aloud to the others. § 87(2)(g)

Finally, PO Angeron, under the supervision of Sgt. Elhaddad as the ranking officer, searched the entire vehicle and did not find any evidence of marijuana. § 87(2)(g)

**Allegation (F) Abuse of Authority: Sergeant Yasin Elhaddad threatened to issue summons to**

§ 87(2)(b)

§ 87(2)(b) did not make this allegation; the investigation is pleading it based on the video footage.

It is undisputed that Sgt. Elhaddad threatened to issue a summons to § 87(2)(b) for disorderly conduct while telling § 87(2)(b) to return to his vehicle and get out of the street. It is also undisputed that other civilians had left the surrounding buildings and started to yell at the officers and record them when the occupants left the vehicle.

Approximately five minutes into the incident and three minutes after § 87(2)(b)'s exiting the vehicle, as captured in Sgt. Elhaddad's BWC footage, located in IA#45, from 4:58 to 5:10 minutes, while PO Angeron finishes searching the driver's area of the car, one of the civilian bystanders standing on the sidewalk records and argues with the officers, telling them that they cannot search the vehicle by law, while the officers reply twice that they can. PO Angeron concludes the search of the driver's area of the vehicle. At 5:13 minutes, § 87(2)(b) standing next to Sgt. Elhaddad on the driver's side of the vehicle, then engages with the bystander shouting at the man that the officers had said it was a traffic violation, repeating the phrase while backing further into the street and turning to Sgt. Elhaddad. At 5:18 minutes, Sgt. Elhaddad tells § 87(2)(b) "Listen. It's just a ticket. Look, you're turning a double parked into a disorderly, just have a seat." § 87(2)(b) tells him no and backs further into the street (BR 02). Between 5:28 and 5:45 minutes, Sgt. Elhaddad tells § 87(2)(b) to sit in his vehicle approximately three times or he would be taken to the precinct for committing disorderly conduct in addition to his double parking violation. § 87(2)(b) continues to argue but gets back into the driver's seat after the third warning (BR 02).

The same interaction is captured in § 87(2)(b)'s cellphone footage between 4:52 and 5:10 minutes (BR 10). It shows that during this time, two additional people are standing on the sidewalk recording officers and unintelligibly trying to argue with them. In the reflection of the car, several cars pass by right behind § 87(2)(b). This shows that the traffic was not blocked and that cars were still driving while Sgt. Elhaddad was telling § 87(2)(b) to return to the vehicle (BR 10). The rest of the video shows the same events captured in Sgt. Elhaddad's BWC footage.

In his statement to the CCRB, Sgt. Elhaddad stated that he threatened § 87(2)(b) with the summons for disorderly conduct because § 87(2)(b) was behaving in a disorderly manner by standing in the street, yelling, and refusing to sit in the vehicle once PO Angeron had finished searching it and Sgt. Elhaddad had instructed him to enter it while they write the summons. Sgt. Elhaddad stated he would have been unable to issue the summons on scene because a crowd had gathered, making it an unsafe environment in a high-crime area. Thereby, he meant that he would have to take § 87(2)(b) to the stationhouse to issue the summons. Sgt. Elhaddad stated there were a lot of people in the street, but he could not remember how many. Sgt. Elhaddad did not issue the summons because § 87(2)(b) ultimately complied with his order (BR 12).

New York State Penal Law Section 240.20(5) states that "[a] person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: [h]e obstructs vehicular or pedestrian traffic (BR 17).

Available video evidence demonstrates that for approximately one minute § 87(2)(b) was in a public street, standing next to a double-parked car while other cars were driving past them. It also shows that at least two other pedestrians gathered to watch him argue with the officers, with § 87(2)(b) beginning to directly engage with one of them, while ignoring Sgt. Elhaddad's directive to get out of the street and into the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Abel Lovera failed to provide § 87(2)(b) with a business card.**

**Allegation (H) Abuse of Authority: Sergeant Yasin Elhaddad failed to provide § 87(2)(b) with a business card.**

**Allegation (I) Abuse of Authority: Police Officer Christian Angeron failed to provide § 87(2)(b) with a business card.**

In his statement to the CCRB, § 87(2)(b) alleged that at the beginning and end of the interaction he asked the officers for their business cards, but each officer refused and said they did not have any cards (**BR 09**).

None of the officers recalled § 87(2)(b) ever requesting a business card from them (**BR 12-14**). However, PO Angeron stated in his CCRB statement that since he issued § 87(2)(b) a summons with all of his information on it, he was not required to proactively offer a business card either (**BR 14**).

§ 87(2)(b)'s cell phone footage that captures his entire interaction with the officers, located in IA#10, does not show him asking the officers for their business cards (**BR 10**). The video shows, however, that he asks each of the officers for their shield numbers. At 1:40 minute, he asks PO Lovera for his shield number, at 6:28 minutes, he asks Sgt. Elhaddad for his shield number, and 8:42 minutes, he asks PO Angeron for his shield number, and the officers provide the requested information to him. § 87(2)(b) asks Sgt. Elhaddad three times in rapid succession for his shield number, and Sgt. Elhaddad truthfully provides his shield number to him the first time § 87(2)(b) requested it and repeats it when § 87(2)(b) asks again. § 87(2)(b) states that he does not believe Sgt. Elhaddad and requests to see the shield to confirm, but Sgt. Elhaddad does not answer him, then says, "I gave you my information," (**BR 10**). At 8:34 minutes, § 87(2)(b) exits his vehicle and approaches the officers as they enter their vehicle. § 87(2)(b) says, "Officer, you're not showing your badge either?" § 87(2)(b) appears to be talking to PO Angeron, who replies, "You didn't ask me." At 8:42 minutes, § 87(2)(b) says, "I'm asking you now, can you show your badge?" § 87(2)(b) approaches the officers' vehicle. PO Angeron replies, "Sir, don't come into the car. 14678," thereby giving his shield number (**BR 10**).

The officers' BWC footage is consistent with § 87(2)(b)'s video. PO Angeron's BWC footage, attached to IA#47, shows the same request by § 87(2)(b) at 9:05 minutes (**BR 04**). PO Lovera's BWC footage in IA#46 also shows the same request for a shield number as captured in § 87(2)(b)'s video at 2:05 minutes (**BR 03**). Sgt. Elhaddad's BWC footage in IA#45 at 7:08, shows § 87(2)(b)'s requests for Sgt. Elhaddad's shield number and his responses (**BR 02**).

§ 87(2)(b)'s video of the incident appears to capture the entire interaction with the three officers and it does not show § 87(2)(b)'s alleged request for the officers' business cards and their alleged refusal. § 87(2)(b)'s cell phone footage and BWC footage, however, show § 87(2)(b) asking each officer for shield number several times and each officer providing that information. § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)

